No. 796

# In the Supreme Court of the United States

OCTOBER TERM, 1967

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 22

*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

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# INDEX



CITATIONS





280-813—67——1

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The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Third Circuit in this case.

## OPINIONS BELOW

The opinion of the court of appeals (App. A; *infra*, pp. 13–22) is reported at 379 F. 2d 702. The findings of fact, conclusions of law, and order of the National Labor Relations Board (App. C, *infra*, pp. 25–41; J.A. 16a–31a)[1] are reported at 159 NLRB No. 95.

## JURISDICTION

The decision of the court of appeals was rendered on June 22, 1967 (App. A, *infra*, pp. 13, 22, and its de-

[1] "J.A." refers to the Joint Appendix in the court below.

cree was entered on August 7, 1967 (App. B, *infra*, pp. 23–24. On September 19, 1967, Mr. Justice Brennan extended the time for filing a petition for a writ of certiorari to and including November 6, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

The basic question is whether a union restrains or coerces a member in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act, in violation of Section 8(b)(1)(A) of that Act, by expelling him for filing a charge against the union with the National Labor Relations Board without having exhausted internal union procedures for the resolution of intra-union disputes.

A subsidiary question is whether the charge filed by the employee adequately alleged that the union had violated his Section 7 rights. But see note 6, *infra*, pp. 10–11.

## STATUTES INVOLVED

Sections 7 and 8(b)(1) of the National Labor Relations Act, as amended, 29 U.S.C. 157, 158(b)(1), provide in pertinent part as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the pur-

pose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities * * *.

SEC. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *.

Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 522, 29 U.S.C. 411(a)(4)) provides in pertinent part as follows:

*Protection of the Right to Sue.*—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof * * *.

## STATEMENT

### A. THE BOARD PROCEEDINGS

Edwin D. Holder, a member of Local 22 and its International Union, Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO, was employed by the United States Lines Company. Local 22 was the collective bargaining representative of the unit in which he worked (J.A. 19a; 3a–4a, 6a). The International Union's constitution, which was binding on Local 22, provided (J.A. 7a):

> Every member * * * considering himself * * * aggrieved by any action of this Union, the [General Executive Board], a National Officer, a Local or other subdivision of this Union shall exhaust all remedies and appeals within the Union, provided by this Constitution, before he shall resort to any court or other tribunal outside of the Union.

Prior to February 28, 1964, Holder filed with Local 22 charges accusing its president of violating the International's constitution. Local 22 found that its president had not committed the alleged violations. (J.A. 19a–20a; 6a.) Without pursuing the intra-union appeals procedure,[2] Holder, on February 28, filed with the Board an unfair labor practice charge based on the same facts as his earlier charges filed with the Union. He alleged that Local 22 had violated Section 8(b)(2) and (1)(A) of the National Labor Relations

[2] The Union constitution provided, *inter alia*, for appeals to the General Membership, to the General Executive Board, and to the National Convention (J.A. 6a–7a).

Act "by causing U.S. Lines to discriminate against him because he had engaged in certain protected activity with respect to his employment by U.S. Lines" (J.A. 19a; 4a, 6a).

At the end of April, Local 22 notified Holder that he had been accused of violating the Unions' by-laws and constitution by filing the unfair labor practice charge with the Board, and that it would hold a hearing thereon. Local 22 found Holder guilty of such violations and expelled him from the Local and the International. Upon Holder's appeal, the General Executive Board of the International affirmed the Local's action. (J.A. 20a–21a; 4a, 6a, 7a.) Holder then filed further unfair labor practice charges with the Board, alleging that the Unions violated Section 8(b)(1)(A) of the Act by expelling him for filing the earlier charge, and a complaint issued (J.A. 2a, 4a–5a).

The Board, adopting the trial examiner's decision (App. C, *infra*, p. 26), held that Local 22 and the International violated Section 8(b)(1)(A)—which makes it an unfair labor practice for a union to restrain or coerce employees in the exercise of rights guaranteed by Section 7—by expelling Holder for filing charges with the Board without exhausting intra-union procedures (*id.*, pp. 33–37). The Board followed its earlier decision in *Local 138, Int'l Union of Operating Engineers (Charles S. Skura)*, 148 NLRB 679, where it had first held that such union discipline of a member was an unfair labor practice. The Board pointed out (*id.*, p. 34) that, in *Skura*, it had "declared that the

Act confers upon any person the right to file an unfair labor practice charge, that a fine is by nature coercive, and, hence, that the union's imposition of the fine against Skura for filing a charge with the Board was violative of his statutory rights." It ruled (*id.*, pp. 35–36) that "[u]nion discipline which coerces members"—whether a fine as in *Skura* or expulsion as in the present case—is "unlawful when administered to punish employees who file unfair labor practice charges with the Board seeking redress of their grievances against a union or its officials, and it is immaterial to this holding that the charges were filed with the Board in contravention of the union's constitutional or bylaw provisions compelling exhaustion of internal union procedures before resort to the Board's processes." The Board ordered the Unions to cease and desist from expelling members for filing charges with the Board, and to reinstate Holder to membership without any loss of status (*id.*, pp. 26–27, 38–41).

### B. THE DECISION OF THE COURT OF APPEALS

The Court of Appeals for the Third Circuit set aside the Board's order. It stated that the issue was "the merits of the Board's so-called *Skura* rule"—which it noted the Court of Appeals for the District of Columbia Circuit had upheld in the *Roberts* case (see *infra*, pp. 8–9)—and it expressly "reject[ed]" the rule (App. A, *infra*, pp. 13–14, 20, 22). The court held that the proviso to Section 8(b)(1)(A) of the Act, which preserves "the right of a labor organization to prescribe its own rules with respect to the acquisi-

tion or retention of membership therein," "protects the union's action in this case" (*id.*, p. 19). Although recognizing that "the proviso does not enable a union to promulgate any rule it desires,"[2a] the court concluded that, since the "rule in question required only that the union be given a fair opportunity to correct its own wrong before the injured member should have recourse to the Board," it did not "offend public policy or impede the normal and proper administration of the Act" (*id.*, pp. 19–20). The court stated that the proviso to Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959—which prohibits a labor organization from limiting the right of any member to initiate any judicial or administrative proceeding but provides that a member may be required first to exhaust reasonable hearing procedures for not more than four months—"expressly sanctions" the use of union discipline designed to require pursuit of internal remedies (*id.*, p. 22). The court also stated that "for the right to file particular charges to be protected by section 7, the charges themselves must assert misconduct which, if proved, would constitute a deprivation of rights declared in that section," but that the "record contains no facts and no analysis by the Board upon the basis of which we can judge whether any type of violation of section 7 is involved here" (*id.*, pp. 17–18).

## REASONS FOR GRANTING THE WRIT

1. The decision of the court below that a union does not commit an unfair labor practice by disciplining

[2a] Cf. *Philadelphia Motion Picture Operators*, *infra*, n. 4, p. 9.

a member for filing a charge with the Board without first exhausting internal union procedures is, as that court recognized (App. A, *infra*, pp. 13–14, 20), in direct conflict with the decision of the Court of Appeals for the District of Columbia Circuit in *Roberts* v. *National Labor Relations Board*, 350 F. 2d 427. There the court, quoting with approval from the Board's *Skura* decision (p. 429), upheld the Board's ruling that a union committed an unfair labor practice by fining a member for filing charges with the Board without having exhausted internal union procedures. (The Board's decision in *Roberts*, rendered the same day as *Skura*, rested on the latter opinion. *H. B. Roberts*, 148 NLRB 674, 676.) The court held (pp. 428–429) that the employee had a Section 7 right to file the charges; and that by disciplining him for doing so the union restrained and coerced him in the exercise of such right, in violation of Section 8(b)(1)(A). The court stated (p. 429) that the Board's order prohibiting the union from thus disciplining him was not "an inroad upon those internal affairs left by the Act and its policy to be administered solely by the Union," since "by filing a charge * * * [the member] stepped beyond the internal affairs of the Union and into the public domain." The court in *Roberts* also held that the proviso to Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959 did not sanction the union discipline. It ruled that that section merely authorizes or requires the court or agency "to withhold the exercise of its authority—for four months if reasonable internal procedures are available and are not earlier exhausted," but does

not allow "the Union itself to impose a fine for failure of a member to exhaust such procedures" (p. 430).[3]

Although in *Roberts* the union discipline was a fine and in the present case it was expulsion, this distinction is irrelevant. The critical consideration is that the court below has taken a diametrically opposite view from that of the District of Columbia Circuit respecting the right of a union to discipline a member for filing charges with the Board without first exhausting internal union procedures. The question is important in the administration of the National Labor Relations Act.[4] Many union constitutions and by-laws require members to exhaust internal union procedures governing intra-union disputes before resorting to judicial

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[3] In *Ryan* v. *International Brotherhood of Electrical Workers*, 361 F. 2d 942 (C.A. 7), certiorari denied, 385 U.S. 935, the court of appeals agreed with *Roberts* that the proviso to Section 101(a)(4) merely granted the courts discretion to withhold action until the employee had exhausted internal union procedures for four months, but did not sanction union discipline for initiating judicial proceedings without such exhaustion of union procedures. See, also, *Detroy* v. *American Guild*, 286 F. 2d 75, 78 (C.A. 2), certiorari denied, 366 U.S. 929.

[4] In addition to its decisions in *Skura*, *Roberts* and the present case, the Board has prohibited union discipline of members for filing charges with the agency in the following cases: *Cannery Workers Union of the Pacific*, 159 NLRB No. 47, pending on petition to review, C.A. 9, No. 21680; *Brotherhood of Painters Local 585*, 159 NLRB No. 98; *Philadelphia Motion Picture Operators Local 344*, 159 NLRB No. 124, affirmed, C.A. 3, August 1, 1967, 65 LRRM 3020. See, also, *Millwrights Local 1510*, 152 NLRB 1374, affirmed, 379 F. 2d 679 (C.A. 5), and *Local Union 136 (Carpenters)*, 165 NLRB No. 139, in which the Board held that a union committed an unfair labor practice by threatening a member with discipline if he filed charges.

In *Tawas Tube Products, Inc.*, 151 NLRB 46, and *United Steelworkers of America*, 154 NLRB 692, the Board held that it is not an unfair labor practice for a union to discipline a

or administrative litigation,[5] and the authority of unions to discipline members who violate such provisions by filing charges with the Board significantly affects the relationships between a union and its members. In the circumstances, it is appropriate for this Court to resolve the conflict and settle the issue.

2. In view of the clear conflict and the importance of the issue, there is no occasion to discuss the merits at any length. In brief, the Board's position is that, since the agency may proceed against unfair labor practices only in response to charges filed with it, the right to file charges is necessary to the assertion of rights protected by Section 7 of the Act and therefore is protected by that section;[6] that by expelling or fining a member for filing charges a union "restrains"

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member for filing with the Board a petition under Section 9(c)(1)(A)(ii) of the Act to decertify the union as the bargaining representative. In *United Stelworkers* the Board distinguished *Skura* on the ground that there is a "fundamental distinction between union disciplinary action aimed at the filing of charges seeking redress for asserted infringement of statutory rights * * * and union disciplinary action aimed at defending [the union] from conduct which seeks to undermine its very existence" (154 NLRB at 696). See, also, *Cannery Workers Union of the Pacific, supra.* The Court of Appeals for the Ninth Circuit upheld the Board's *United Steelworkers* decision in *Price* v. *National Labor Relations Board*, 373 F. 2d 443, and a petition for certiorari to review that ruling is pending in No. 399. Because of the close relationship between the issue in the present case and in *Price*, we do not oppose the petition in the latter. See our memorandum in No. 399, being filed simultaneously herewith.

[5] *Disciplinary Powers and Procedures in Union Constitutions*, United States Department of Labor, Bureau of Labor Statistics, Bulletin No. 1350, p. 28 (1963).

[6] The court below held (App. A, *infra*, pp. 16–19) that the original charge filed by Holder did not adequately allege that the Union had interfered with the exercise of rights guaranteed

or "coerces" him, within the meaning of Section 8(b)(1)(A), in the exercise of rights guaranteed by Section 7; that the proviso to Section 8(b)(1)(A), which recognizes "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership," does not authorize a union "to prevent or regulate access to the Board, and a rule requiring exhaustion of internal union remedies by means of which a union seeks to prevent or limit access to the Board's processes is beyond the lawful competency of a labor organization to enforce by coercive means" (*Skura*, 148 NLRB at 682);[7] and that the proviso to Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959 authorizes the Board to defer for up to four months the

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by Section 7. Assuming without conceding that this was a relevant factor in determining whether the Union's expulsion of Holder for filing the charge constituted an unfair labor practice, the court of appeals erred in concluding that the charge was inadequate. Holder alleged "that Local 22 violated Section 8(b)(1)(A) and (2) of the Act by causing U.S. Lines to discriminate against him because he had engaged in certain protected activity with respect to his employment by U.S. Lines" (J.A. 4a). The references to "protected activity" and to Section 8(b)(1)(A), which expressly makes it an unfair labor practice for a labor organization "to restrain or coerce * * * employees in the exercise of the rights guaranteed in section 7," demonstrate that an impairment of Section 7 rights was alleged. No greater specificity was required. "The charge is not proof. It merely sets in motion the machinery of an inquiry. * * * The charge does not even serve the purpose of a pleading." *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U.S. 9, 18.

[7] In *National Labor Relations Board* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, the Court sustained the Board's conclusion that Section 8(b)(1)(A) does not bar a union from fining members who cross its picket line during an authorized strike

processing of a charge while the employee exhausts the internal union procedures, but does not authorize the union to discipline him for filing a charge without having done so. See the opinion of the Board in *Skura* and that of the court of appeals in *Roberts*, where these principles are more fully developed.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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DOMINICK L. MANOLI,
*Associate General Counsel,*
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*National Labor Relations Board.*

NOVEMBER 1967.

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and from attempting to collect those fines through court suits. Unlike the Union's attempt to block access to the Board's unfair labor practice procedures here involved, the union's endeavor in *Allis-Chalmers* to make the strike effective was not beyond the union's "lawful competency to enforce by coercive means" (*Skura*, *supra*). As the Court pointed out (*id.* at 181), the "economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and '[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent * * *.'" No comparable policy consideration could be invoked to justify the union's conduct in the present case.

## APPENDIX A

United States Court of Appeals for the Third Circuit

No. 16055

INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 22, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition for Review of an Order of the National Labor Relations Board

Argued March 29, 1967

Before: HASTIE and SEITZ, *Circuit Judges*, and BODY, *District Judge*

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OPINION OF THE COURT

(Filed June 22, 1967)

By HASTIE, *Circuit Judge.*

On the petition of an international union and one of its locals for the review of an unfair labor practice decision and order, 159 NLRB No. 95, and a cross-petition of the National Labor Relations Board for enforcement of the order, we here consider the merits of the Board's so-called *Skura* rule, as recently adopted in *Local 138, International Union of Operating Engineers and Charles S. Skura*, 1964, 148 N.L.R.B. 679, and sanctioned by the Court of Appeals

for the District of Columbia in *Roberts* v. *N.L.R.B.*, D.C. Cir., 1965, 350 F. 2d 427.

The alleged unfair labor practice in this case is the union's conduct in discharging Edwin Holder from union membership because he had filed with the Board an unfair labor practice charge against the local and its president without first exhausting prescribed and available remedies within the labor organization.

Holder had filed intra-union charges with his local, alleging that the local president had wrongfully caused Holder's employer to discriminate against him because of "certain legally protected activity". Except for the quoted phrase, the present record does not disclose details or even the substance of Holder's complaint. The local considered and dismissed these charges. The International Constitution of the union provided for an appeal from the decision of a local to the General Executive Board of the International. It also required that any member "aggrieved by any action of * * * a local * * * shall exhaust all remedies and appeals within the Union, provided by this Constitution, before he shall resort to any court or other tribunal outside of the Union". Disregarding this requirement and without taking any intra-union appeal from the local's decision, Holder filed with the Board an unfair labor practice charge against the local, alleging the same conduct of which he had unsuccessfully complained to the local. Here again, the present record fails to specify the details of that conduct. The General Counsel refused to issue a complaint and the unfair labor practice charge was dismissed.

Shortly thereafter, Holder was charged before the trial board of his local with violation of the above cited provision of the International Constitution. He

was found guilty and expelled from membership. He then appealed to the General Executive Board of the International which confirmed his expulsion.

Holder next initiated the present unfair labor practice proceeding, charging that the labor organization had violated section 8(b)(1)(A) of the National Labor Relations Act, as amended, 29 U.S.C. § 158(b)(1)(A), by coercing him in the exercise of rights guaranteed by section 7 of the Act. Applying the *Skura* rule, the Board found a violation as charged and issued the unfair labor practice order which is now before us.

Section 8(b)(1)(A) reads in pertinent part as follows:

> It shall be an unfair labor practice for a labor organization or its agents—
>
> "(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *."

Thus, the only rights which this subsection protects are those contained in section 7, which reads in its entirety as follows:

> Employees shall have the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

280-813—67——3

Accordingly, our first inquiry is whether section 7 protects an employee's asserted right to complain to the Board of his union's alleged unfair interference with his "legally protected activity" without first exhausting his remedy within the union as required by the union's constitution.

It will be observed that section 7 says nothing about any right to file charges with the Board. That section is concerned exclusively with an employee's freedom to unionize, to bargain collectively, and to engage in other concerted activities, as well as the concomitant freedom to refrain from participating in such organized or concerted activity. These freedoms are, by necessary implication, attended by a remedial right of the employee to charge coercive abridgement of them in an unfair labor practice proceeding before the Board. Thus, a section 8(b)(1)(A) unfair labor practice can be established here by showing that rights incidental to organization or bargaining were the basis of Holder's complaint which led to punitive union action, and in no other way.

It is argued here, as it was in the *Roberts* and *Skura* cases that section 7 protects the employee's freedom to complain to the Board of union misconduct regardless of the foundation for the charge. But as we have just pointed out, if any respect is to be accorded the language of section 7, its protection of the right to file charges must be limited to complaints that the union has in some way interfered with the sort of activity that is described in that section. It may be that Holder's complaint was of such a breach of the union's duty to represent the employee fairly as the Court of Appeals for the Fifth Circuit recently found to be inherent in the collective bargaining process protected by section 7. *Local Union No. 12, United Rubber, C.L.&P. Workers* v. *NLRB,* 5th Cir., 1966, 368 F. 2d

12. But this record contains no facts and no analysis by the Board upon the basis of which we can judge whether any type of violation of section 7 is involved here.

The *Skura* decision itself, which is indistinguishable from and followed in this case, is similarly lacking in any showing of how that controversy involved the subject matter of section 7. Only a few months earlier, in the so-called *Wisconsin Motor case, Local 283, UAW,* 1964, 145 NLRB 1097, the Board, after reviewing pertinent legislative history, had ruled that it had "not been empowered by Congress to police a union decision that a member is or is not in good standing or to pass judgment on the penalties a union may impose on a member so long as the penalty does not impair the member's status as an employee". 145 NLRB at 1104. In the *Skura* case, the Board recognized its Wisconsin Motor "opinion that the Act did not vest it with authority to police the internal discipline of a union short of job discrimination". 148 NLRB at 682. Hard put to distinguish the two cases factually, the Board announced and relied upon its view that "overriding public interest" required that a union not be permitted to discipline an employee in an effort to "limit access to the Board's processes". To that end, it apparently read into section 7, without any stated justification, a general right of access to the Board, unlimited by any requirement that the particular controversy involve organizational rights or rights inherent in collective bargaining.

In the *Roberts* case, the Court of Appeals said "we assume, and petitioners agree, as stated in their brief, that 'the right of an employee to file charges is protected under section 7' ". 350 F. 2d at 428. But the court seems not to have considered what we have attempted to demonstrate, that in order for the right to

file particular charges to be protected by section 7, the charges themselves must assert misconduct which, if proved, would constitute a deprivation of rights declared in that section.

The *Roberts* opinion also points out that section 8(a)(4) expressly makes it an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges" under the Act. From this the court seems to imply that a union should be treated in the same manner and that Congress must have so intended. But while the Taft-Hartley Act undoubtedly undertook to impose many responsibilities upon unions equivalent to the responsibilities of employers under the original Wagner Act, we find no basis for concluding that whatever had been required of the one is now implicity required of the other. Indeed, included in the Taft-Hartley bill as it passed the House was a provision, section 8(c)(5), which stipulated that punitive action by a union against a member for filing charges against the union or otherwise taking issue with it constituted an unfair labor practice. 1 Leg. Hist. L.M.R.A. 53–54. But the conference committee deleted this section and the bill was enacted without it. H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 46, U.S. Code Cong. Service 1947, 1135. Thus, it was not by inadvertence that Congress failed to include in the Taft-Hartley Act a general section explicitly protecting union members who filed charges against their unions from union reprisals.

In this area of Taft-Hartley Act restrictions on union conduct, imposed as "the result of conflict and compromise between strong contending forces", the Supreme Court has counseled "wariness in finding by construction a broad policy against" a type of conduct "when * * * it is clear that those interested in

just such a condemnation were unable to secure its embodiment in enacted law". *Local 1976, United Brotherhood of Carpenters* v. *NLRB,* 1958, 357 U.S. 93, 99–100. Mindful of this admonition and its pertinence to the present issue, we think neither the board nor a court can properly employ its views of public policy as justification for engrafting upon section 7 a general right of unlimited access to the Board, the declaration of which the Congress considered but chose to withhold.

In these circumstances, if there were no other error in the Board's decision, we would remand the cause for reconsideration and further showing whether and how section 7 rights are involved in Holder's original complaint. However, there are other considerations which require that the Board's decision be set aside.

We have not heretofore discussed the proviso of section 8(b)(1)(A), "that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *." We think that proviso protects the union's action in this case.

We agree with the Board that the proviso does not enable a union to promulgate any rule it desires and hinge membership upon adherence. For example, a union rule which subjected a member to dismissal or other disciplinary action for filing charges with the Board against the union alleging conduct which, if proved, would constitute an unfair labor practice within some provision of the Act, would frustrate the operation of the Act and thus, by logical implication, be outside of the protection of the proviso. Here, however, the union rule in question required only that the union be given a fair opportunity to correct its own wrong before the injured member should have recourse to the Board. We do not see how such a rule offends

public policy or impedes the normal and proper administration of the Act. Indeed, to the extent that such a rule relieves the Board of the unnecessary burden of grievances that can be settled within a union, it serves the purposes of the Act well. On the other hand, the member's right to charge his union before the Board is not detrimentally affected by requiring that the exercise of that right be postponed until after a practical and reasonable resort to internal remedies as provided by the union. *Cf. Harris* v. *International Longshoremen's Assn., Local 1291,* 3d Cir., 1963, 321 F. 2d 801. Of course, a court or an administrative agency will determine for itself whether the alleged intra-union remedy is in fact available and whether resort to it would impose unreasonable delay or hardship upon the complainant.

Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 411 (a)(4), both confirms our view of the impact of public policy in a situation such as this and makes it mandatory that the *Skura* rule be rejected and the Board's action in this case set aside. Section 101(a)(4) appears in that part of the 1959 Act which is entitled, "Bill of Rights of Members of Labor Organizations". It provides that "no labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency * * *. *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations * * *."

It will be observed that the subsection applies to proceedings "before any administrative agency", thus covering the present proceeding before the National

Labor Relations Board. Indeed, the introductory section of the 1959 Act recites as one of its purposes the correction of union and management practices "which distort and defeat the policies of the" Taft-Hartley Act. But in applying the statute's general prohibition of union action restricting the right of a member to institute a proceeding before an administrative agency, the Board is equally obligated to respect the attending proviso, "that any such member may be required to exhaust reasonable hearing procedures * * * within such organization * * *."

To avoid the impact of this proviso, the Board argues that the proviso does not say who may require the union member to exhaust internal hearing procedures and then reaches the surprising conclusion that it is the Board, rather than any labor organization, that is authorized by Congress to require that a union member resort to reasonable intra-union procedures. We think this construction does violence to the structure and the sense of section 101. That section is entitled, "Bill of rights; constitution and by-laws of labor organizations". It consists of a number of provisions prescribing what unions may and may not do and require in the conduct of their affairs and in the treatment of their members. The general prohibition in the subsection here in question is expressly directed against labor organizations. Logically, and in normal reading, the attendant and qualifying proviso is an exception stating what such an organization may do despite the preceding general restriction upon its action. Moreover, there is no need for a proviso to authorize a court or an administrative body to postpone its action until a litigant shall exhaust intra-union remedies, since judicial and quasi-judicial bodies frequently exercise such discretionary power to postpone their own action pending the exhaustion of other

remedies as a matter of inherent right without benefit of legislation.

For these reasons we hold, as has been said in a concurring opinion in one of our earlier decisions, that this subsection means "that a union may not restrict a member's resort to the courts except that it may require that the member first devote not more than four months to reasonable grievance procedures within the organization".[1] See *Sheridan* v. *United Brotherhood of Carpenters, Local 626,* 3d Cir., 1962, 306 F. 2d 152, concurring opinion of Hastie, J., at 160. But *cf. Detroy* v. *American Guild of Variety Artists,* 2d Cir., 1961, 286 F. 2d 75, *cert. denied* 366 U.S. 929. It follows that in administering the National Labor Relations Act, the Board may not make the union's conduct in this case an unfair labor practice because section 101(a)(4) of the Labor-Management Reporting and Disclosure Act expressly sanctions it.

For these reasons, we reject the *Skura* rule and hold that the union has not committed any unfair labor practice within permissible interpretation of section 8(b)(1)(A).

Accordingly, the Board's petition for enforcement of its order will be denied and, on the petition to review, the order will be set aside.

[1] There is no suggestion here that Holder could not have obtained intra-union review of his complaint against the local president within a four-month period. Indeed, when he appealed his expulsion, the General Executive Board of the International considered and decided the appeal very promptly.

## APPENDIX B

United States Court of Appeals for the Third Circuit

No. 16055

INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL–CIO, AND ITS LOCAL 22, PETITIONERS

*v.*

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

(File in formal file R)

DECREE

Before: HASTIE and SEITZ, *Circuit Judges,* and BODY, *District Judge*

THIS CAUSE came on to be heard upon the petition of Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO, and its Local 22 to review the order of the National Labor Relations Board issued against Petitioners, their officers, agents, and representatives on June 23, 1966, and upon cross-petition of the National Labor Relations Board to enforce said Order. The Court heard argument of respective counsel on March 29, 1967, and has considered the briefs and the transcript filed in this cause. On June 22, 1967, the Court being full advised in the premises, handed down its decision denying the petition for enforcement and setting aside the Board's Order.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Third Circuit that the Order of the National

Labor Relations Board directed against Petitioners, Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO, and its Local 22, their officers, agents, and representatives, be and it hereby is set aside.

By the Court,

WILLIAM H. HASTIE,
*Circuit Judge.*

Dated: August 7, 1967.

# APPENDIX C

United States of America Before the National Labor Relations Board

Case No. 2–CB–4148

INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL–CIO, AND LOCAL 22, INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL–CIO (UNITED STATES LINES COMPANY) AND EDWIN D. HOLDER

## DECISION AND ORDER

On November 22, 1965, Trial Examiner Thomas N. Kessel issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondents and the General Counsel filed execptions to the Trial Examiner's Decision and supporting briefs.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudi-

cial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision and the entire record in this case, including the exceptions and briefs, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, with the modifications noted herein.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommendations of the Trial Examiner, as modified below, and hereby orders that the Respondents, Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO, and Local 22, Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO, their officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommendations, as herein modified:

1. Delete from paragraph 1(a) of the Trial Examiner's Recommendations, and from the first paragraph of the Appendix attached to the Trial Examiner's Decision the last line beginning with the words, "without first exhausting * * *."

2. Substitute for paragraph 2(a) the following:

"(a) Upon request, reinstate Edwin D. Holder to membership in their organizations without requiring payment of back dues for the period of his expulsion, except for that portion of his dues which is shown at the compliance

[1] In this connection and for a detailed discussion of the issues presented by this case, see the recently issued case of *Van Camp Sea Food Co., Inc.*, 159 NLRB No. 47.

stage to be regularly allocable to the cost of insurance premiums, pension contributions and other welfare benefits accruing to Respondents' members; to the extent that benefits such as life insurance, health, and medical insurance and benefits and the like cannot be made retroactively for Holder, Respondents shall reimburse Holder for any expenses or losses, with interest thereon at 6 percent per annum, suffered as a result of the absence of such benefits, less the proportion of Holder's dues which would have been allocable to the payment of premiums for or other purchase of such benefits."

3. Substitute for the second indented paragraph of the attached "Appendix" the following:

"WE WILL reinstate EDWIN D. HOLDER, upon application, to membership in our organizations without loss of any status as a member because of our expulsion of Holder from membership, and we will reimburse him, with interest thereon, for any losses or expenses suffered because of the absence of certain benefits during the period of his expulsion in accordance with a Decision and Order of the National Labor Relations Board."

Dated, Washington, D.C., Jun. 23, 1966.

FRANK W. MCCULLOCH,
*Chairman,*
JOHN H. FANNING,
*Member,*
HOWARD JENKINS, Jr.,
*Member,*
[SEAL] *National Labor Relations Board.*

and its own Rules and Regulations, requested the Chief Trial Examiner to designate another Trial Examiner in the proceeding in place of Trial Examiner Hilton. On October 12, 1965, I received such designation.

On the basis of the record before me, including the rulings by Trial Examiner Hilton, I make the following:

## FINDINGS OF FACT

### *I. Commerce facts*

The complaint alleges and the answer admits that United States Lines Company, herein called U.S. Lines, is a New Jersey corporation maintaining a principal office and place of business in New York City where it has been engaged in operating ocean going vessels in domestic and foreign commerce. During the year preceding issuance of the complaint U.S. Lines performed services valued in excess of $100,000 for various enterprises located in States other than New York. I find from the foregoing facts that U.S. Lines is engaged in interstate commerce within the meaning of the Act and that the Act's purposes will be effectuated by the Board's assertion of jurisdiction in this case over its operations.

### *II. The labor organizations involved*

IUMSWA and Local 22 are labor organizations within the meaning of the Act. IUMSWA is the parent International of Local 22.

### *III. The unfair labor practices*

The Respondents' alleged violation of Section 8(b)(1)(A) is based on their expulsion from membership in their organizations of charging party Holder be-

cause he had filed an unfair labor practice charge against Local 22 with the Board's Regional Office. The answer admits the essential facts pleaded by the complaint but denies that these facts constitue unlawful conduct. These are the facts, in addition to those above stated, established by the pleadings:

(a) Local 22 has at all times material been recognized by U.S. Lines as the collective bargaining representative of a unit of its painters.

(b) At all times material Holder was employed by U.S. Lines within the foregoing unit.

(c) At all times material and until June 9, 1964, Holder was a member of both Local 22 and IUMSWA.

(d) On February 28, 1964, Holder filed an unfair labor practice charge against Local 22 with the Board's Second Regional Office in Case No. 2–CB–3959 alleging that Local 22 had violated Section 8(b)(1)(A) and (2) of the Act by causing U.S. Lines to discriminate against him because he had engaged in certain protected activity with respect to his employment by U.S. Lines.

The answer expressly admits the facts related in the foregoing paragraph but defensively pleads certain other facts which the General Counsel has moved to strike as irrelevant. These are the assertions in the answer:

> * * * the unfair labor practice charge in Case No. 2–CB–3959 was filed by Holder only after he had previously filed with Local 22 charges accusing the president of Local 22 of violating certain provisions of the IUMSWA constitution and said charges had resulted in a finding that the president was innocent of said charges. The unfair labor practice charge filed by Holder in Case No. 2–CB–3959 was based on the same facts as those on which his charges against Local 22's president had been based.

(e) On or about April 29, 1964, Holder was notified by letter from Local 22's president that on May 13, 1964, a hearing would be held before Local 22's Trial Board to determine whether there was merit to charges brought against Holder that he had violated Local 22's by-laws and the IUMSWA constitution by filing the unfair labor practice charge in Case No. 2–CB–3959.

The answer expressly admits this allegation but defensively pleads certain other facts which the General Counsel has also moved to strike as irrelevant. The answer quotes the provisions of the IUMSWA constitution, binding on Local 22, pertaining to procedures for expulsion of members, and the constitutional provision compelling members aggrieved by any action of IUMSWA, its constituent locals or officers, to exhaust all remedies and appeals provided by the constitution before resorting to any outside court or tribunal. The answer asserts Holder violated the foregoing constitutional provision by the filing of a charge in Case No. 2–CB–3959 and attributes this action to his dissatisfaction with the finding by Local 22 that its president was innocent of the charges Holder had preferred against him.

(f) On or about June 8, 1964, at a membership meeting, Local 22 announced through its Executive Board that it had found Holder guilty of the foregoing charges of violation of the Respondent's by-laws and constitution and thereupon Local 22 expelled him from membership in the Respondents.

(g) On or about June 19, 1964, Holder appealed the foregoing decision by Local 22 to the General Executive Board of IUMSWA and on or about October 7, 1964, that board denied Holder's appeal and upheld and confirmed his expulsion from membership in the Respondents.

The General Counsel relies upon the Board's decisions in *Skura,* 148 NLRB No. 74, *Wellman-Lord,* 148 NLRB No. 81 and *Tawas Tube,* 151 NLRB No. 9, to support the contention that the Respondents violated Section 8(b)(1)(A) of the Act by Holder's expulsion from membership. The Respondents contend that the facts of the instant case are distinguishable from those in *Skura and Wellman-Lord* and that the Board's holdings in those cases are not here applicable. The Respondents further argue that the Board incorrectly decided *Skura* and that its holding should not therefore here be applied. Concerning *Tawas Tube,* the Respondents contend that the Board's holding therein supports the defense rather than the General Counsel's case.

In *Skura* a member (Skura) of the union involved in the case had filed an unfair labor practice charge with the Board's Regional Office against the union claiming its discriminatory refusal to refer him to available employment. The Regional Director thereafter notified Skura of his decision not to issue a complaint based on the charge, whereupon Skura withdrew the charge. Subsequently charges were preferred against *Skura* by the union's official claiming that he had violated the union's by-laws when he filed the unfair labor practice charge. These by-laws, like the by-laws in the instant case, compelled aggrieved members to exhaust all means provided by the constitution of the union's parent International before resorting to "any civil or other action." Although notified, *Skura* did not appear before the union's grievance committee for the hearing on the charge against him, was tried *in absentia,* was found guilty of violating the foregoing constitutional provision and was fined $200. His subsequent tender of union dues was refused because the

union's by-laws forbade acceptance of dues from members who had fines outstanding.

The Board held that the Union had violated Section 8(b)(1)(A) of the Act by fining *Skura* in the foregoing circumstances. It declared that the Act confers upon any person the right to file an unfair labor practice charge, that a fine is by nature coercive, and, hence, that the union's imposition of the fine against *Skura* for filing a charge with the Board was violative of his statutory rights. The Board concluded that the union had violated the Act by its conduct notwithstanding the union's rule prohibiting aggrieved members from resorting to external procedures before exhausting internal union means for remedy of grievances.

*Wellman-Lord* was a companion case and was issued by the Board on the same day with its decision in *Skura*. The *Wellman-Lord* facts are essentially like those of *Skura* and the holdings in both cases are identical.

The *Tawas-Tube* decision was issued by the Board in the context of a representation proceeding. An issue in the case involved the union's expulsion from membership of two members one of whom had filed a petition to decertify the union as collective bargaining representative of the employees of the employer in the case. The other employee had with the first supported the decertification cause. While the election in the decertification proceeding was pending, these employees were notified by the union's president that they were to be tried by the union for violation of a provision of the parent International's constitution creating the offense of

> advocating or attempting to bring about the withdrawal from the International Union of any Local Union or any member or group of members.

The two employees were thereafter tried by a committee of their union's members and were expelled for their activities. The issue resulting from this action was whether the election in the decertification proceeding should be set aside on the ground that the expulsions restrained or coerced unit employees. The Regional Director concluded that under *Skura* the Union's conduct was an unfair labor practice and that the election should be set aside. The Board disagreed.

The Board construed the proviso to Section 8(b)(1)(A) [1] of the Act to exclude the foregoing union conduct from the proscriptions of that section. The expulsions were regarded by the Board as "appropriate union disciplinary action under the circumstances." Noting that *Skura* was not a controlling precedent, the Board emphasized that it had, in deciding the *Skura* case, "limited the scope of the union disciplinary action generally allowable under the terms of section 8(b)(1)(A)'s proviso because of the importance of safeguarding prompt and unimpeded access to the Board's processes by employees complaining of union infringement of their statuatory rights. We held that in light of this overriding policy it was beyond the competence of the Union to enforce its rule by coercive means and thus deter employees from restoring to Board processes in such circumstances."

It is clear that the *Tawas Tube* decision does not disturb the Board's *Skura* holding. Union discipline which coerces members is still unlawful when administered to punish employees who file unfair labor practice charges with the Board seeking redress of their grievances against a union or its officials, and it is

[1] The proviso states that the language of Section 8(b)(1)(A) "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

immaterial to this holding that the charges were filed with the Board in contravention of the union's constitutional or bylaw provisions compelling exhaustion of internal union procedures before resort to the Board's processes. Application of these governing Board principles to the facts of the instant case compels the conclusion that by the expulsion of Holder for membership because he had filed unfair labor practice charges against Local 22 with the Board's Regional Office in Case No. 2–CB–3959 the Respondents violated Section 8(b)(1)(A) of the Act.

In reaching the foregoing conclusion I accord no merit to the contention in the Respondents' letter answering the General Counsel's Supplemental Memorandum that the Board's *Tawas Tube* holding should be construed to mean that an expulsion from membership, unlike the imposition of a fine, has no coercive effect upon employees in the exercise of statutory rights. There is no support in *Tawas Tube,* or in logic, for this generalization. Although the Board in *Tawas Tube* regarded the expulsion of employees who were seeking the union's decertification as an ineffective deterrent against resorting to the Board's processes, it said this while underscoring the fact that "loss of membership was of no significance" to these employees. This is not true in Holder's case. There is no indication that continuation of his membership in the Respondents meant nothing to him. To the contrary, this very proceeding, initiated by Holder's filing of unfair labor practice charges against the Respondents for his expulsion, shows positively that his membership was significant to him. Further, I have no doubt that, if, as the Board said in *Skura,* "a fine is by nature coercive", an expulsion from membership even more effectively coerces employees. The ultimate penalty associated with the imposition of a fine is loss of membership in the union which may be avoided by

payment of the fine. Expulsion from membership leaves no room for grace. The ultimate penalty, with loss of benefits inherent in union membership including a voice in the democratic decisions of the organization materially affecting the welfare of members, is immediate and final.

Having concluded from the facts established by the pleadings that the Respondents have violated Section 8(b)(1)(A) of the Act, the General Counsel's motion for judgment on the pleadings is granted. There is, accordingly, no need to pass on the General Counsel's motion to strike portions of the Respondents' answer.

*IV. The effect of the unfair labor practices upon commerce*

The activities of the Respondents set forth in section III, above, occurring in connection with the operations of U.S. Lines, described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

*V. The remedy*

Having found that the Respondents have engaged in unfair labor practices violative of Section 8(b)(1)(A) of the Act, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. United States Lines Company is an employer within the meaning of Section 2(2) of the Act and is

engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO and Local 22, Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By expelling Edwin D. Holder from membership in their organizations because Holder had filed unfair labor practice charges with the Board without first exhausting his internal union remedies, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

## RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this proceeding I recommend that Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO, and Local 22, Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO, their officers, agents, and representatives shall:

1. Cease and desist from:

(a) Expelling employees from membership in their organizations because they have filed unfair labor practice charges with the Board against them or their officials without first exhausting their internal union remedies.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed employees in Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Reinstate to membership in their organizations Edwin D. Holder without any loss of status as a member resulting from his expulsion.

(b) Post at their business offices and at all other places where notices to members are customarily posted, in conspicuous places, copies of the notice attached hereto marked "Appendix."[2] Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by official representative of the Respondents, be posted by the Respondents immediately upon receipt thereof and maintained by them for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Second Region in writing within 20 days from the receipt of this Decision and Recommendations what steps they have taken to comply therewith.[3]

Dated at Washington, D.C.

THOMAS N. KESSEL,
*Trial Examiner.*

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[2] In the event that these Recommendations shall be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of the United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[3] In the event that these Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Second Region in writing within 10 days from the date of receipt of this Order what steps the Respondents have taken to comply herewith."

## NOTICE

TO ALL MEMBERS OF INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL–CIO AND LOCAL 22, INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL–CIO (UNITED STATES LINES COMPANY)

PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER OF THE NATIONAL LABOR RELATIONS BOARD AND IN ORDER TO EFFECTUATE THE POLICIES OF THE NATIONAL LABOR RELATIONS ACT

We hereby notify you that:

WE WILL NOT expel employees from membership in our organizations because they have filed unfair labor practice charges with the National Labor Relations Board against us or our officials without first exhausting their internal union remedies.

WE WILL reinstate Edwin D. Holder to membership in our organizations without loss of any status as a member because of our expulsion of Holder from membership.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act.

INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL–CIO

(*Labor Organization*)

Dated_____ By_____

(*Representative*) (*Title*)

LOCAL 22, INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, AFL–CIO (UNITED STATES LINES COMPANY)

(*Labor Organization*)

Dated_____ By_____

(*Representative*) (*Title*)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 5th Floor Squibb Building, 745 Fifth Avenue, New York, New York 10022 (Tel. No. 751–5500).

U.S. GOVERNMENT PRINTING OFFICE: 1967